



# California Fair Political Practices Commission

December 4, 1989

Robert Remen, Executive Director  
California Transportation Commission  
1120 N Street  
P.O. Box 942873  
Sacramento, CA 94273-0001

Re: Your Request for Advice  
Our File No. A-89-655

Dear Mr. Remen:

We have received your letter dated November 15, 1989 (copy enclosed) seeking written confirmation of the telephone advice provided to you on that date. The Commission provides advice only with respect to prospective conduct; Regulation 18329(b)(8)(A) (copy enclosed) provides that formal written advice will be declined where the "requester is seeking advice relating to past conduct."

This is to confirm that your letter accurately reflects current law and the advice provided to you regarding the responsibilities of a member of the California Transportation Commission under the conflict of interest provisions of the Political Reform Act ("the Act").<sup>1</sup> I advised you that, pursuant to Regulation 18700 (copy enclosed), the decision to include a locally-funded project in the State Transportation Improvement Program does not constitute a governmental decision within the meaning of the Act. This advice is based on the facts you provided indicating that the decision in question is ministerial.<sup>2</sup>

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> The Commission does not act as a finder of fact when it issues advice. Our advice is applicable only to the extent that the facts provided to us are correct and all of the material facts have been provided. (Section 83114(b); In re Oglesby (1975) 1 FPPC Ops. 71, 76 n.6, copy enclosed.)

File No. A-89-655

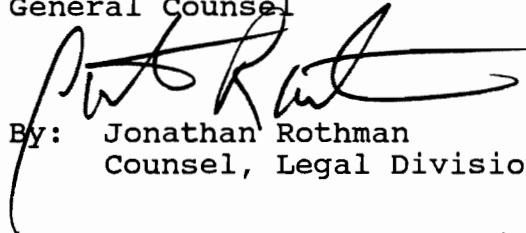
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As you correctly state in your letter, our advice would be different concerning decisions which are not ministerial.

If you have any further questions regarding this matter, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

A handwritten signature in black ink, appearing to read "Jonathan Rothman", is written over the typed name and title.

By: Jonathan Rothman  
Counsel, Legal Division

KED:JR:plh

Enclosures

JOSEPH A. DUFFEL, Chairman  
WILLIAM E. LEONARD, Vice Chairman  
WILLIAM T. BAGLEY  
MARGIE HANDLEY  
J.T. (TOM) HAWTHORNE  
STANLEY W. HULETT  
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JOE LEVY  
BRUCE NESTANDE

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN  
GOVERNOR



FPPO

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ROBERT I. REMEN, Executive Director

## CALIFORNIA TRANSPORTATION COMMISSION

1120 N STREET, P.O. BOX 942873  
SACRAMENTO 94273-0001  
FAX (916) 445-5856  
(916) 445-1690

November 15, 1989

TO: John Rothman  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814

A handwritten signature in cursive script that reads "Robert I. Remen/mlb".

FROM: Robert Remen, Executive Director  
California Transportation Commission

SUBJECT: CONFLICTS OF INTEREST

I am writing to seek from you a confirmation of our telephone conversation of November 15, 1989 regarding conflicts of interest. Specifically, I asked you if there was cause for a Commissioner to abstain from a vote listing a wholly-locally-funded project in the State Transportation Improvement Program (STIP), if that project would result in some economic benefit to the Commissioner or his employer.

Projects seeking state or federal funding MUST appear in the STIP. This is a competitive process wherein all proposed projects must compete for a limited amount of federal and/or state funding; the Commission is authorized by statute to decide which projects get funded and which ones do not. This is clearly a discretionary decision, one that an individual Commissioner must abstain from if he or she has a personal economic interest in the project.

By contrast, there is NO statutory requirement that projects which are wholly locally funded be programmed in the STIP, because they are not competing for state or federal funding. The listing of such projects in the STIP is done for purposes of keeping a thorough inventory of these projects. The Commission adds wholly locally-funded projects into the STIP only after two determinations are presented to the Commission:

- written commitment to full local funding;
- judgment by Caltrans that the project will not adversely affect the operation of the state system.

John Rothman  
November 15, 1989  
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Any discretionary judgment regarding such projects is made by others--by Caltrans, in terms of the project's compatibility with the state system; and by local public and private parties in deciding whether to fund the project. The Commission's role, in listing the project in the STIP, is truly ministerial.

In light of the above explanation, I understood from our phone conversation that your judgment was that an individual Commissioner need not abstain from adding a wholly locally funded project into the STIP, even when that project might result in some personal economic benefit either to the Commissioner or to that Commissioner's employer.

Please clarify or confirm in writing, AS SOON AS POSSIBLE, this understanding, based on our phone conversation of November 15, 1989.

RIR:mlb:B19  
mb1106/MB1

JOSEPH A. DUFFEL, Chairman  
WILLIAM E. LEONARD, Vice Chairman  
WILLIAM T. BAGLEY  
MARGIE HANDLEY  
J.T. (TOM) HAWTHORNE  
STANLEY W. HULETT  
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BRUCE NESTANDE

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN  
GOVERNOR



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ROBERT I. REMEN, Executive Director

## CALIFORNIA TRANSPORTATION COMMISSION

1120 N STREET, P.O. BOX 942873  
SACRAMENTO 94273-0001  
FAX (916) 445-5856  
(916) 445-1690

November 15, 1989

TO: John Rothman  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA 95814

FROM: *Robert I. Remen / pg.*  
Robert Remen, Executive Director  
California Transportation Commission

SUBJECT: CONFLICTS OF INTEREST

I am writing to seek from you a confirmation of our telephone conversation of November 15, 1989 regarding conflicts of interest. Specifically, I asked you if there was cause for a Commissioner to abstain from a vote listing a wholly-locally-funded project in the State Transportation Improvement Program (STIP), if that project would result in some economic benefit to the Commissioner or his employer.

Projects seeking Commission approval for state or federal funding MUST appear in the STIP. This is a competitive process wherein all proposed projects must compete for a limited amount of federal and/or state funding; the Commission is authorized by statute to decide which projects get funded and which ones do not. This is clearly a discretionary decision, one that an individual Commissioner must abstain from if he or she has a personal economic interest in the project.

There is one exception to this rule. Under recent state legislation, local jurisdictions can receive state funding from a special reserve for projects on the state highway system where local funding has been provided. This program is known as the "State-Local Partnership" program. However, the CTC has NO role to play in the award of these funds. These funds are decided upon and administered exclusively by the Department of Transportation (i.e., Caltrans).

There is NO statutory requirement that projects which are wholly locally funded be programmed in the STIP, because they are not competing for state or federal funding. The listing of such projects in the STIP is done for purposes

John Rothman  
November 15, 1989  
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of keeping a thorough inventory of these projects. The Commission adds wholly locally-funded projects into the STIP only after two determinations are presented to the Commission:

- o written commitment to full local funding;
- o judgment by Caltrans that the project will not adversely affect the operation of the state system.

Any discretionary judgment regarding such projects is made by others--by Caltrans, in terms of the project's compatibility with the state system; and by local public and private parties in deciding whether to fund the project. The Commission's role, in listing the project in the STIP, is truly ministerial.

In light of the above explanation, I understood from our phone conversation that your judgment was that an individual Commissioner need not abstain from adding a wholly locally funded project into the STIP, even when that project might result in some personal economic benefit either to the Commissioner or to that Commissioner's employer. Similarly, I would conclude that an individual Commissioner need not abstain from adding a project into the STIP when it has received partial state funding from the "State-Local Partnership" program.

Please clarify or confirm in writing, AS SOON AS POSSIBLE, this understanding, based on our phone conversation of November 15, 1989.

RIR:mlb:B19  
mb1106/MB1



# California Fair Political Practices Commission

November 29, 1989

Robert Remen  
Executive Director  
California Transportation Commission  
P.O. Box 942873  
Sacramento, CA 94273-0001

Re: Letter No. 89-655

Dear Mr. Remen:

We received your letter requesting confirmation of advice under the Political Reform Act on November 15, 1989. Your letter has been assigned to Jonathan Rothman, an attorney in the Legal Division, for response. If you have any questions, you may contact him directly at (916) 322-5901.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

*Kathryn E. Donovan*  
Kathryn E. Donovan  
General Counsel

KED:plh:confadv1